

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARCO GARNICA,

**Plaintiff,**

v.

STATE OF WASHINGTON,  
DEPARTMENT OF CORRECTIONS,  
BERNARD WARNER, RONALD  
FRAKER, D. KUTH.

## Defendants.

CASE NO. C14-5546 BHS-JRC

**ORDER DENYING PLAINTIFF'S  
MOTION FOR APPOINTMENT OF  
COUNSEL**

The District Court has referred this 42 U.S.C. §1983 civil rights action to Magistrate

Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff asks the Court to appoint counsel to represent him in this matter (Dkt. 12). This action involves plaintiff allegedly slipping in the shower at Clallam Bay Corrections Center (Dkt. 1-2, complaint removed from Thurston County Superior Court).

There is no right to have counsel appointed in cases brought pursuant to 42 U.S.C. § 1983. Although the Court can request counsel to represent a party, 28 U.S.C. § 1915(e)(1), the

1 Court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328,  
2 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v.*  
3 *Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires the  
4 Court to evaluate both the likelihood of success on the merits and the ability of plaintiff to  
5 articulate his claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789  
6 F.2d at 1331. Plaintiff argues that he will be better served by having an attorney but, the fact that  
7 a pro se litigant may be better served with the assistance of counsel is not the test. *Rand v.*  
8 *Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir.  
9 1998). Plaintiff fails to show the case is complex although he makes that assertion in his motion  
10 (Dkt. 12).

11 Plaintiff has articulated his claim as a failure to prevent a hazardous condition resulting in  
12 plaintiff falling and injuring himself. Plaintiff has not made any showing that he is likely to  
13 succeed on the merits. Plaintiff has articulated claims and while he states that he was born in  
14 Mexico, he has demonstrated a working knowledge of English and is able to communicate with  
15 the Court.

16 At this time, plaintiff has failed to show that exceptional circumstances warrant  
17 appointment of counsel in this case. The Court denies plaintiff's motion for appointment of  
18 counsel (Dkt. 12).

19 Dated this 8<sup>th</sup> day of September, 2014.

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22 J. Richard Creatura  
23 United States Magistrate Judge  
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